

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

ORDER

On March 25, 2008, the court heard argument on the plaintiff's motion to compel (doc. # 31) and the defendants' motion to dismiss for want of prosecution (doc. # 29) which is based on the plaintiff's failure to appear for a deposition. The plaintiff's motion is due to be denied because the discovery requests were untimely¹ and, as dismissal is too harsh a sanction for the plaintiff's failure to appear for a deposition, the court will order the imposition of a lesser sanction in the form of requiring the plaintiff to appear for a deposition at a certain time and place. Accordingly, it is

ORDERED as follows:

1. That the plaintiff's motion to compel be and is hereby DENIED.
2. That the defendants' motion to dismiss which is treated as a motion for sanctions is
TED to the extent that the plaintiff shall appear for his deposition at 9:00 a.m. on Friday.

¹The discovery deadline is January 30, 2008. The plaintiff's interrogatories and requests for production were served on January 8, 2008, less than 30 days prior to the discovery deadline. FED.R.CIV.P. 33 and 34 both allow 30 days for response. Consequently, the requests were untimely because the defendant did not have the full time allowed by the rules to respond.

March 28, 2008, at the Montgomery, Alabama office of the defendants' counsel and shall remain until the deposition is completed. The deposition shall be taken in accordance with the provisions of FED.R.CIV.P. 30.

The plaintiff is warned that if he fails to appear for the deposition as required by this order, his case will be dismissed.

Done this 25th day of March, 2008.

/s/Charles S. Coody
CHARLES S. COODY
CHIEF UNITED STATES MAGISTRATE JUDGE